



**MINUTES  
SCOTTSDALE PLANNING COMMISSION  
KIVA – CITY HALL  
3939 N. DRINKWATER BOULEVARD  
FEBRUARY 25, 2004**

**PRESENT:** David Gulino, Chairman  
David Barnett, Commissioner  
James Heitel, Commissioner  
Eric Hess, Commissioner  
Jeffery Schwartz, Commissioner  
Steven Steinke, Commissioner

**ABSENT:** Steve Steinberg, Vice Chairman

**STAFF:** Kurt Jones  
Pat Boomsma  
Randy Grant  
Don Hadder  
Al Ward  
Greg Williams

**CALL TO ORDER**

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**MINUTES APPROVAL**

February 11, 2004

**APPROVED**

**COMMISSIONER SCHWARTZ MADE A MOTION TO APPROVE THE FEBRUARY 11, 2004 MINUTES AS PRESENTED. SECOND BY COMMISSIONER BARNETT.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

**CHAIRMAN GULINO** remarked there would be one change to the agenda case 2-UP-2004 has been pulled to the regular agenda.

**CONSENT AGENDA**

11-AB-2003 (McDowell Mountain Community Church) request by Hustead Engineering, applicant, McDowell Mountain Church, owner, to abandon all existing General Land Office easements along the north, west and east property lines located at 10700 N. 124<sup>th</sup> Street (northwest corner of Shea Blvd and 124<sup>th</sup> Street).

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.

**LEON SPIRO**, 7814 E. Oberlin Way, spoke in opposition of this request. He inquired why there was not a staff presentation on this case.

**CHAIRMAN GULINO** stated the Commission would not require a presentation because they are familiar with the case.

**MR. SPIRO** spoke in opposition of this request. He stated this Planning Commission meeting is to be held under the Arizona open meeting statute. He stated he would like them to remember the comments made by Attorney Boomsma on February 11, 2004 regarding 1-AB-2003:

"The summary of the City's position at this time is that the City is abandoning only its interests in the general land patent office easement. And takes no position whether any private right exists over the easement as that is a matter between private parties and not a matter with the City. The City declines to take a legal position when it does not need to. Regarding liability the City Council has considered the issue at length and had a number of executive sessions and legal memorandum exchanged. It is their position and the City Council's decision to as what legal risk to take in planning matters as well as all other matters. The City Council directed staff and requested the Planning Commission limit inquiries to the planning issues involved as opposed to the legal risk involved.

She stated the third question was regarding whether the GLO easements would be constructed on. She replied that she had no knowledge whether these GLO easement would be constructed on and that would be an issue of whether they

would be infringing on any private rights because they would not be infringing on any city rights.”

He requested that the McDowell Mountain Church Directors before considering construction on these easements ask their attorney whether there are issues involved that could result in legal action.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

14-AB-2003 (Sienna Hills) request by Walker/Long Holdings, applicant, Roman Catholic Church of the Diocese of Phoenix, owner, to abandon existing General Land Office easements on property located at the southwest corner of Gail Road and 124<sup>th</sup> Street.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**LEON SPIRO**, 7814 E. Oberlin Way, spoke in opposition of this request. He inquired why there was not a staff presentation on this case.

**CHAIRMAN GULINO** stated the Commission would not require a presentation because they are familiar with the case.

**MR. SPIRO** spoke in opposition of this request. He stated he understood that this property is to be a future school site and it was too bad the church was forced to sale this property. He inquired if the reason for the abandonment of this GLO easement is for the purchaser of the property to construct on the easement. He reported that Attorney Boomsma has stated that the City's position at this time is that the City is abandoning only its interests in the general land patent office easement. And takes no position whether any private right exists over the easement as that is a matter between private parties and not a matter with the City. The City declines to take a legal position. He inquired if the City approves a plat plan, which, permits construction on these easements is not the legal staff saying there is no private right attached to these easements.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**COMMISSIONER HEITEL** stated as he has indicated in the past, he has no problem with the City abandoning or revoking any unnecessary interest it may have in the federal patent easement. He further stated while no one would seriously suggest that Scottsdale has the authority to fully and unilaterally abandon a Federal patent easement. And indeed, in abandoning he believed they are tacitly recognizing there probably remains some interest or obligation holding over from the original patent grant or reservation.

He remarked that while he would support these two cases relative to the City's interest he remains deeply troubled that the city refuses to require site plans to show all easements as a matter of city policy.

**CHAIRMAN GULINO** requested legal counsel state the City's position. Ms. Boomsma replied Mr. Spiro's comments are accurate that the City Council has considered the legal risks at issue in the abandonment of GLO easements and has requested that the Planning Commission look at planning issues and that they not consider the legal risks involved.

**COMMISSIONER SCHWARTZ MOVED TO FORWARD CASES 11-AB-2003 AND 14-AB-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER BARNETT.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).**

### **REGULAR AGENDA**

2-UP-2004 (South Corp Yard) request by City of Scottsdale, applicant/owner, for approval of a Municipal Use Master Site Plan to provide for municipal uses on a 18 +/- acre parcel located at 7601 McKellips Road with Multi-Family District (R-5) zoning.

**MR. WARD** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

**COMMISSIONER BARNETT** stated the initial traffic reported showed only 300 uses per day and the supplement reported showed 1087 per day. He inquired if this included the entire parcel. Mr. Ward replied the initial traffic report indicated only 300 trips per day for the northerly as well as an additional 300 vehicle trips per day but additional information has indicated a total of approximately 1000 vehicle trips per day.

Commissioner Barnett reported that he drove by this site and it would be safe to say that this is the ugliest site in the entire city. It is run down and poorly maintained. There are power lines all over the place. He further reported staff is asking the Commission to forward this with a recommendation for approval and he is concerned that there is not much included in the plan to approve other than to approve the city to do whatever they want to do on the site for the most part. Mr. Ward replied the intent of the Municipal Master Site Plan is to provide a conceptual proposal for development of the site.

Commissioner Barnett inquired if the City decide they want to do something different on the property later on would they have to come back through this process or does the approval give them carte blanche to do whatever going

forward. Mr. Jones stated some of the site plan is more specific because of the stages of the design they are in. He further stated the Commission is approving what the site is already approved for. He reported from a development standpoint they would have to file a Design Review Board case to talk about the screening of the walls and access points. This process is the initial step in the development of the site and municipal site process does identify whether there will be significant impacts to the surrounding community with what is being proposed.

Commissioner Barnett stated there are a lot of loose ends in this proposal. He requested additional information on the traffic.

**PHIL KERCHER** stated the traffic information contained in the staff report was an early estimation and after a more detailed study the 600 trips per day number was increased to about 1000 trips per day based on more information regarding the employees on the site.

**COMMISSIONER STEINKE** inquired if there would be any transmission towers or radio towers planned on this site. Mr. Eisner replied there are not any transmission towers planned for this station due to the way the radio system works they would not be needed.

**COMMISSIONER SCHWARTZ** stated that he would like to reiterate some of Commissioner Barnett's comments and he would agree with everything he has said. He further stated that unfortunately the Planning Commission deals with land use issues and not quality issue of what a project is going to look like. They are hoping that as this goes through the Design Review Board the quality whether a municipal site plan or any development is held to a high level of standards. He remarked he wished that they could comment and make recommendations on these items because he thought it would help ensure as these projects come through whether they are city projects or from the development community they are adhered to the quality that they expect for the community.

**COMMISSIONER HEITEL** inquired why a landscape buffer or bike path was not included along McKellips. Mr. Kercher replied the City has provided a connection to the greenbelt and they are leaving the existing sidewalk. Commissioner Heitel stated he would recommend that the DR Board pay particular attention to buffering the eight-foot walls in the same manner the City would require private developer to.

**CHAIRMAN GULINO** stated there is a typo the stipulations refer to a site plan that is dated February 3<sup>rd</sup> and the site plan is dated February 5<sup>th</sup>. He further stated he assumed February 5<sup>th</sup> is the date they want to use. Mr. Ward replied in the affirmative.

Chairman Gulino inquired if all the existing buildings on the south side will be removed at some point. Mr. Ward replied three of the buildings will remain.

Chairman Gulino stated there is a lack of consistency from the north half to the south half. He requested information regarding the storage on the east side. He further stated that he felt some of the comments from other Commissioners' might be addressed under the section where they give direction to the DR Board. He remarked he would like to see the following added:

Under Planning Development 1 (e) Efforts to mitigate affects of noise, smoke, odor, dust, and vibration upon adjacent properties. Revise that to be specific to the items generated on this site as they would affect adjacent properties.

Under Planning Development 1 (a) Wall design. Direct the DR Board to pay attention to screening so that speaks to location of walls, types of walls and possible landscape buffers along McKellips.

**COMMISSIONER BARNETT** stated he did not have an issue with this site being used as a police station. He further stated he would be voting against this case because he felt they did not have enough information or knowledge of what is going on with the rest of the site to make a valid recommendation.

**CHAIRMAN GULINO** inquired about what would be stored on the east side. Mr. Walsh replied material storage.

**COMMISSIONER SCHWARTZ** stated that he would be voting in favor of this case but with reservation regarding the level of detail and what the appearance of the building will be. He further stated that the felt the DR Board and the City needs to keep themselves at the same level they expect from the development community when developing municipal sites.

**COMMISSIONER HEITEL MOVED TO FORWARD CASE 2-UP-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT THAT IT MEETS THE USE PERMIT CRITERIA AND WITH THE ADDITIONAL STIPULATIONS:**

**THAT THE DR BOARD PAY PARTICULAR ATTENTION TO THE LANDSCAPING AND BUFFERING AND OVERALL SITE APPEAL OF THE PROJECT.**

**REGARDING THE NOISE AND ODOR THAT IT IS CLEAR IT IS RELEVANT FROM THE GENERATION ON SITE.**

**SECOND BY COMMISSIONER SCHWARTZ.**

**THE MOTION PASSED BY A VOTE OF FOUR (4) TO TWO (2) WITH  
COMMISSIONER BARNETT AND COMMISSIONER STEINKE DISSENTING.**

**NON-ACTION ITEM**

**Discussion on ESLO**

**MR. GRANT** stated on November 5, 2003, the Planning Commission review proposed refinements to the ESLO Ordinance. Since that meeting staff has received additional input from the City Council and from an ESLO Stakeholders group. He provided a brief overview of the additional recommendations. He reported City Council is slated to review the Ordinance at their March 16 meeting. He requested feedback from the Commission on issues they would like to give staff direction on.

**CHAIRMAN GULINO** inquired if the ordinance requires any setback from NAOS line to where they can build a wall, building, pool, or ramada. Mr. Grant replied there is not a ordinance related to how much NAOS would be calculated but there is a policy related to what is reasonably expected would be maintained when they have a NAOS disturbance and generally that is five feet. Chairman Gulino stated they should consider establishing that in the ordinance so that it is not left for interpretation.

**MR. HADDER** presented information on how staff is using the GIS technology to create overlay maps that will help to identify environmentally sensitive features on sites.

**CHAIRMAN GULINO** inquired if fire damage would be shown on these maps. Mr. Hadder replied in the negative. Chairman Gulino inquired how these maps would be utilized on a day to day practice. Mr. Grant replied it is a guideline to understand where open space should be located.

Chairman Gulino stated he would strongly suggest when time allows they start looking at the State Land. He further stated he felt fire damage is important from a vegetation perspective.

**COMMISSIONER HEITEL** stated the mapping is a great tool to underscore the NAOS areas. He further stated there should be more specific criteria on 50-CFS washes. Mr. Hadder replied these maps are for review purposes to give staff a clue as to where to look for those areas but the decision would be made on the site plan and would be looked at on a case by case basis. Commissioner Heitel inquired if the language puts the highest priority on wash areas adjacent to 50 CFS washes. If it is strong enough, consistent enough, and clear enough that

they would have those tools at their disposal. Mr. Grant replied in the affirmative. He noted they have the mapping technology to somewhat predict those areas. Commissioner Heitel stated he was uncomfortable with the wording more that 20 percent of the building pad area. Mr. Grant stated that would be changed to footprint.

**COMMISSIONER BARNETT** inquired if there was a clause for major remodels or tear downs if they would be qualified under the new or old plan. Mr. Grant replied under the old plan an approved subdivision would be exempt. One of things is being discussed whether they should grandfather those people who have built within the subdivision and require those people who have not built within the subdivision to meet the new standard. He added they need to come up with an appropriate balance regarding grandfathering.

**CHAIRMAN GULINO** stated the information they have received is open-ended and so he would suggest they bring this issue back as a regular meeting item and give them a chance digest the information and make a clean recommendation to Council.

**COMMISSIONER BARNETT** stated the most prudent way to go would be to establish a single hurdle where people are aware of the types of changes they can make and the types of approval they will need based on historical precedence that they have already gotten. He further stated rather than coming up with a longer version of a grandfathering clause just come up with one simple standard so there is not room for a lot of interpretation. Mr. Grant replied he was right that there are a couple of provisions in the ordinance that could lead to difference in how the subdivision is built out.

**COMMISSIONER HEITEL** stated they might want to consider establishing a time period to comply with the new ordinance. Mr. Grant stated there is a lot of validity to that suggestion. He further stated it could affect the quality of a project because they are trying to beat the clock.

**COMMISSIONER BARNETT** inquired about the type of feedback staff is getting on the grandfathering clause from people who are coming to these meetings. Mr. Grant stated there is a good deal of concern about what it will ultimately be. He further stated there is a concern that people have done marketing based on the ability to build a certain house and sold the lot based on that. There is a reliance on the approval of the plat.

**CHAIRMAN GULINO** inquired if the issue of grandfathering is a Planning Commission issue or an issue for the City Attorney's Office and the City Council. Ms. Boomsma stated the reason it needs to come before the Planning Commission is because it is a text amendment and it will affect the look and applicability of the remainder of the provisions. Depending on how large the



exemption is will be how many properties the new rule applies and that is the balance. People with existing property rights want to build under the known. Chairman Gulino stated staff has presented them with two tables. He requested staff to combine them into one table. He further stated he would like time to go through this information. He suggested they discuss this at the next meeting.

**COMMISSIONER HEITEL** stated at the next meeting the Commission could deal with the grandfathering issue and other specific issues related to the language. Mr. Grant reported the only subject that is advertised for the next meeting is the topic of grandfathering. Ms. Boomsma stated they could discuss other issues informally but could not be included in their recommendation. She further stated their discussions would be included in the minutes.

**COMMISSIONER BARNETT** stated he was comfortable with everything he has seen except the grandfathering issue.

**COMMISSIONER HEITEL** stated his major concern is subdivision wall and perimeter walls issue. He further stated he would be interested in discussing that at length in an informal way at the next meeting.

#### **WRITTEN COMMUNICATION**

There was no written communication.

#### **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 7:50 p.m.

Respectfully Submitted,

"For the Record " Court Reporters